

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant : Dan Bourla  
Appl. No. : 10/724,821  
File : December 2, 2003  
Title : INTRAOPERATIVE BIOMETRY  
Group Art Unit: 2873  
Examiner : Brandi N. Thomas  
Docket No. : 1371DAN-US  
Honorable Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

REPLY

Sir:

Applicant has carefully studied the outstanding Official Action mailed on July 10, 2008. This response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claims 7 and 10 stand rejected under 35 USC §103(a) as being unpatentable over Fercher (US 5847827) in view of Hellmuth et al. (US 7084986).

Claims 8 and 9 stand rejected under 35 USC §103(a) as being unpatentable over Fercher (US 5847827) in view of Hellmuth et al. (US 7084986) and further in view of Patel (US 2003/0214628).

Claims 11-16 stand rejected under 35 USC §103(a) as being unpatentable over Fercher in view of Hellmuth et al. (US 7084986) and further in view of Baumann et al (US 2006/0146283).

In the rejection of claim 7, Examiner states that Hellmuth et al. discloses removing the lens from an eye (col. 1, lines 31-39).

Applicant respectfully traverses these rejections as improper. The text Examiner quotes from the background of Hellmuth et al. is as follows: "Following operations in the region of the lens of the eye and the cornea, for example, cataract operations or refractive procedures on the cornea, optical deviations or aberrations can occur in the visual system of the eye which can not be corrected by spherical or astigmatic lenses or cylindrical lenses. Another problem with these aberrations is that they increase dramatically as the pupil diameter increases and thus seriously impair night vision in particular. Therefore, it is

important to detect these aberrations by measurement techniques in order to be able to initiate appropriate corrective measures already during the operation if possible. Further, in the case of cataract operations in which the original lens has been removed and replaced by an artificial lens, it is very important to measure the length of the eye in order to select an appropriate synthetic replacement lens which is adapted to the length of the eye and thus enables good vision.”

It is respectfully requested to read this passage carefully, and to read it together with the rest of the Hellmuth et al. patent. The passage says “it is important to detect these aberrations by measurement techniques in order to be able to initiate appropriate corrective measures already during the operation if possible”. The “in order to be able to initiate appropriate corrective measures already during the operation if possible” part does NOT mean the measurements are carried out during the surgery with the lens removed. Rather it means one must “detect these aberrations by measurement techniques” so that AFTERWARDS during surgery it will “be able to initiate appropriate corrective measures already during the operation if possible”. The same thing applies to the next sentence – “in the case of cataract operations in which the original lens has been removed and replaced by an artificial lens” does NOT mean the measurements are carried out during the surgery with the lens removed. Rather “it is very important to measure the length of the eye” PRIOR to taking out the lens “in order to select an appropriate synthetic replacement lens which is adapted to the length of the eye and thus enables good vision”.

The reason that this is the correct understanding of these sentences is the fact that in all of the description of the invention and drawings nowhere does Hellmuth et al. contemplate using the method during surgery wherein the natural lens is removed. As previously noted, the same holds true for Fercher, who never once contemplates using his method during surgery wherein the natural lens is removed. Both the Hellmuth et al. and Fercher methods are for when the natural eye is still in place and are not contemplated once for use during surgery.

Please also note that Hellmuth et al. (see col. 2, lines 9-37) explicitly teach against using the PCI device of their own US Patent 5,975,699 to Hellmuth. This is another reason why Hellmuth et al. does not make the instant invention obvious at all.

Accordingly, all the claims of record are deemed to be allowable.

Applicant hereby permits email correspondence with Applicant’s representative, especially for clarifying points to lead to allowance of the application. If Examiner believes

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that Fercher or Hellmuth et al. has anything to do with surgery involving removal of the natural lens, Applicant's representative would be very happy to discuss this.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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